IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 349 OF 2002

Daga Fibres Pvt.Ltd. .. Appellant
v/s.

1. The Asstt. Commissioner of Income Tax,
Circle 4(3), Mumbai & anr. .. Respondents

Mr.M.Subramanian i/by Mr.V.S.Hadade for appellant.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 18th August, 2004

P.C.

Heard Mr.M.Subramanian, the learned counsel

for the assessee-appellant.

2. The Tribunal considered the matter thus-

> "7. In the present case though the identity of the creditor is established, there are insufficient facts to establish the creditworthiness of the creditor. It is obligatory upon the assessee to furnish the sufficient material to establish the creditworthiness of the creditor. The books of accounts were not produced by the creditor. It was not shown that how the creditor was in the position to advance the sum of Rs.6,50,000/-. The books of accounts were not produced by the creditor on the ground that the books were stolen. No evidence or material was produced to substantiate that the books of the creditor were stolen. Even bank account of the creditor was not produced at any stage. The transactions relating to purchases also do not support the financial creditworthiness of the creditor and genuineness of the transaction in absence of any other supporting material. The assessee had made the purchases from the creditor for which the payments were made within a span of about three months. The amount of Rs.6,50,000/- which was obtained by the assessee from creditor in the month of April remained untouch for whole of the year. No explanation has been furnished

that on which consideration the huge amount of Rs.6,50,000/- was retained by the assessee from creditor as interest free amount. Thus, the Assessee remains unable to establish the genuineness of the creditor also. No particulars of assessment of income tax of the creditor was made available to the revenue at any stage. The assessment for the year under consideration was framed vide asstt. Order dated 31.03.1997. By that time, the Income Tax assessments particulars of the creditors could not have been available if the creditor was an assesses or had filed Income Tax return. Keeping in view the entirety of the facts, we are of the opinion that there was no material to establish the creditworthiness of the creditor to prove the cash credit, it is necessary to establish the creditworthiness of the creditor. The assessee failed to establish the same. Therefore, cash credit remained unexplained and CIT(A) was wrong in deleting the addition made by A.O. in this regard. We reverse the order of CIT(A) on this issue and restore that of A.O."

3. The consideration of the matter by the Tribunal does not suffer from any infirmity of law. No substantial question of law arises. Appeal is dismissed in limine.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)